

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
REGIONAL HEARING  
OFFICE

IN THE MATTER OF:

Phillips Pipe Line Company  
East St. Louis Terminal  
Cahokia, Illinois

) Docket No. CAA-05-2002-0018  
)  
)  
) Proceeding to Assess a  
) Civil Penalty under  
) Section 113(d) of the  
) Clean Air Act,  
) 42 U.S.C. § 7413(d)  
)  
)

02 SEP 26 P3:08

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Phillips Pipe Line Company (Phillips), a corporation with headquarters located at 252 East Adams Building, Bartlesville, Oklahoma. This complaint addresses violations at Phillips' East St. Louis Terminal facility located at 3300 Mississippi Avenue in Cahokia, Illinois.

Statutory and Regulatory Background

4. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) at 40 C.F.R.

§§ 63.420 through 63.429 (Subpart R).

5. The NESHAP for Gasoline Distribution Facilities applies to any "bulk gasoline terminal" as defined by 40 C.F.R. § 63.421.

6. The NESHAP, at 40 C.F.R. § 63.421, defines "bulk gasoline terminal" as any gasoline facility which receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State or local law and discoverable by the Administrator and any other person.

7. The regulation at 40 C.F.R. § 60.111b(j) defines "storage vessel" as each tank, reservoir, or container used for the storage of volatile organic liquids.

8. For purposes of the NESHAP, 40 C.F.R. § 63.421 defines "volatile organic liquid (VOL)" as gasoline.

9. The NESHAP, at 40 C.F.R. § 63.423(a), requires the owner or operator of a bulk gasoline terminal, subject to the provisions of this subpart, to equip each gasoline storage vessel with a design capacity greater than or equal to 75 m<sup>3</sup> according to the requirements in 40 C.F.R. § 60.112b(a)(1) through (4), except for the requirements in 40 C.F.R. § 60.112b(a)(1)(iv) through (ix) and 40 C.F.R. § 60.112b(a)(2)(ii).

10. The regulation at 40 C.F.R. § 60.112b(a) requires the owner or operator of each storage vessel with a design capacity greater than or equal to 151 m<sup>3</sup> containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2

kPa but less than 76.6 kPa, to equip each storage vessel with (1) a fixed roof in combination with an internal floating roof, (2) an external floating roof, (3) a closed vent system and control device, or (4) an equivalent system.

11. The regulation at 40 C.F.R. § 60.112b(a)(1)(ii) requires, for a fixed roof in combination with an internal floating roof, that the internal floating roof be equipped with one of the following closure devices between the wall of the storage vessel and the edge of the internal floating roof:

(A) A foam- or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal). A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank.

(B) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous.

(C) A mechanical shoe seal. A mechanical shoe seal is a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

12. The Administrator may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for Subpart R violations that occurred prior to January 31, 1997,

under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collection Improvement Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for Subpart R violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

13. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

14. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

15. The Administrator may assess a penalty greater than \$220,000, under Section 113(d)(1), where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$220,000, is appropriate for an administrative penalty action.

**General Allegations**

17. Phillips owns and operates a gasoline facility (Facility) known as the East St. Louis Terminal which is located at 3300 Mississippi Avenue in Cahokia, Illinois.

18. Phillips' Facility receives gasoline by pipeline and has a gasoline throughput greater than 75,700 liters per day.

19. Phillips' Facility is a bulk gasoline terminal, as that term is defined at 40 C.F.R. § 63.421.

20. Phillips' Facility includes a tank used to store gasoline and known as Tank 2001.

21. Tank 2001 is used to store a "VOL" as defined by 40 C.F.R. § 60.421.

22. Tank 2001 is a "storage vessel" as defined by 40 C.F.R. § 60.111b(j).

23. Tank 2001 has a design capacity greater than or equal to 75 m<sup>3</sup>.

24. Tank 2001 was constructed with a fixed roof in combination with an internal floating roof.

25. Tank 2001 has a design capacity greater than or equal to 151 m<sup>3</sup> and contains a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kPa but less than 76.6 kPa.

26. Phillips was required to equip the internal floating roof of gasoline storage Tank 2001 with one of the closure devices (seals) specified in 40 C.F.R. § 60.112b(a)(1)(ii)(A), (B), or (C) as required by 40 C.F.R. § 63.423(a) on or about December 15, 1997.

27. In a letter dated September 14, 2001, Phillips notified the Illinois Environmental Protection Agency and U.S. EPA that Tank 2001 had a seal which does not meet the control equipment specifications described in 60.112b(a)(1)(ii).

28. Phillips removed Tank 2001 from service on October 1, 2001 in order to install a mechanical shoe seal.

29. From December 15, 1997, until October 1, 2001, Tank 2001 was not equipped with a seal meeting the control equipment specifications described in 40 C.F.R. § 60.112b(a)(1)(ii).

30. Phillips equipped the internal floating roof of gasoline storage Tank 2001 with one of the closure devices specified in 40 C.F.R. § 60.112b(a)(1)(ii)(A), (B), or (C) on November 1, 2001.

#### Count I

31. Complainant incorporates paragraphs 1 through 30 of this complaint, as if set forth in this paragraph.

32. From December 15, 1997 to October 1, 2001, Phillips failed to equip gasoline storage Tank 2001 with a design capacity greater than or equal to 75 m<sup>3</sup> according to the requirements of 40 C.F.R. 60.112b(a)(1)(ii), which constitutes a violation of 40 C.F.R. § 63.423(a).

33. The violation of 40 C.F.R. § 63.423(a) constitutes a violation of Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

34. Phillips' violation of 40 C.F.R. § 63.423(a) subjects Phillips to the issuance of an Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

### **Proposed Civil Penalty**

35. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

36. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$140,570. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

37. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

### **Rules Governing This Proceeding**

38. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

### **Filing and Service of Documents**

39. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as

part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

40. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Mony Chabria to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Chabria at (312) 886-6842. Mr. Chabria's address is:

Mony Chabria (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Penalty Payment**

41. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Mr. Chabria and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division



U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Opportunity to Request a Hearing**

42. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 43 through 48, below.

**Answer**

43. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above, and must serve copies of the written answer on the other parties.

44. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

45. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

46. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

47. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 42 above.

48. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**

49. Whether or not Respondent requests a hearing,

Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Mony Chabria at the address or phone number specified above.

50. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

51. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/26/2002  
Date



Stephen Rothblatt, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CAA-05- 2002-0018<sup>831</sup>

In the Matter Phillips Pipe Line Company  
Docket No. ~~CAA-05- 2002-0018~~ <sup>2002-0018</sup>

CERTIFICATE OF FILING AND MAILING

RECEIVED  
REGIONAL HEARING  
CLERK

I, Betty Williams, do hereby certify that I hand delivered the original and one copy of the Administrative Complaint, docket ~~CAA-05- 2002-0018~~ <sup>2002-0018</sup> to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Mr. David Ysebaert, President  
Phillips Pipe Line Company  
600 N. Dairy Ashford  
Cherokee Building 2092  
Houston, Texas 74079

I also certify that a copy of the Administrative Complaint was sent by First Class Mail to:

Mr. D.C. Gill, Jr.  
Phillips Pipe Line Company  
354 Adams Building  
Bartlesville, Oklahoma 74004

Ms. Julie Armitage, Acting Manager  
Compliance and Enforcement Section  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

on the 26<sup>th</sup> day of September, 2002.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 01784698